

ENTERED

November 19, 2015

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TERRY MATTHEW DAVIS,

§

Plaintiff,

§

VS.

§

MR. JOHNSON, *et al.*,

§

Defendants.

§

CIVIL ACTION NO. 4:15-CV-3391

MEMORANDUM AND ORDER

Terry Matthew Davis, an inmate incarcerated at the Stringfellow Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, has filed a prisoner civil rights complaint. Davis has not paid the filing fee. This action will be dismissed pursuant to the provisions of 28 U.S.C. § 1915(g).

Barring a show of imminent danger, under the Prison Litigation Reform Act of 1995, a prisoner may not file an action without prepayment of the filing fee if he has, on three or more prior occasions, filed a prisoner action in federal district court or an appeal in a federal court of appeals which was dismissed as frivolous or malicious. 28 U.S.C. § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 385 (5th Cir. 1996). Davis accumulated at least five such dismissals before filing the pending complaint, and is no longer allowed to proceed *in forma pauperis* pursuant to the provisions of section 1915(g). See *Davis v. Hendry*, No. 4:12cv3640 (S.D. Tex. Apr. 22, 2013); *Davis v. Hendry*, No. 4:12cv3620 (S.D. Tex. Apr. 22, 2013); *Davis v. Sgt./Lt. of Classification*, No. 4:13cv98 (S.D. Tex. (Jan. 17, 2013); *Davis v. Rowell*, No. 4:12cv3601 (S.D. Tex. Jan. 11, 2013); *Davis v. Martinez*, No. 4:12cv3598 (S.D. Tex. Dec. 21, 2012). Davis' allegations do not plead any facts showing that he is in any immediate danger which would

warrant waiver of the fee requirement. *See Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998); *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

In light of the pleadings and his litigation history, Davis has failed to show that he is eligible to proceed as a pauper and has also failed to assert a claim that has any legal basis. Consequently, this action should be dismissed pursuant to 28 U.S.C. § 1915(g) and 28 U.S.C. § 1915(e). This dismissal shall count as a strike under section 1915(g).

The court ORDERS that the Prisoner Civil Rights Complaint (Docket Entry No. 1), filed by TDCJ-CID Inmate Terry Matthew Davis, TDCJ-CID No. 01948635 is DISMISSED. 28 U.S.C. § 1915(g); 28 U.S.C. § 1915(e).

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the parties and to the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, Fax Number (512) 936-2159.

SIGNED on this 19th day of November, 2015.



Kenneth M. Hoyt
United States District Judge